

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**CHAMBERS OF
MICHAEL A. SHIPP
UNITED STATES MAGISTRATE JUDGE**

**MARTIN LUTHER KING COURTHOUSE
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NEWARK, NJ 07102
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Not for Publication

LETTER OPINION AND ORDER

July 31, 2009

VIA CM/ECF

All counsel of record

**Re: Archbrook Laguna, LLC v. New Age Electronics, et al.
Civil Action No. 08-1421 (KSH)(MAS)**

Dear Counsel:

Defendants New Age Electronics, Inc., Adam Carroll, Lee Perlman, and Marshall Mizell (collectively “New Age Defendants”) move to renew their request for leave to file a motion to dismiss and stay discovery (DE # 224). Plaintiff Archbrook Laguna, LLC (“Archbrook”) opposes the motion (DE # 231). For the reasons set forth below, the New Age Defendants’ motion for leave to file a motion to dismiss and stay discovery is granted.

Judge Hayden “requires that counsel must confer with the Magistrate Judge prior to filing any dispositive motion.” (See LITE, N.J. FEDERAL PRACTICE RULES, Appendix 2 (GANN)). The purpose of this rule is to prohibit motions that necessarily require factual discovery from being filed prematurely. This rule is not a mere formality, but rather one of substance that requires the requesting party to clearly articulate why the particular motion has merit.

Here, consistent with this rule, the New Age Defendants sought leave to file a motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure by letter dated May 19, 2009 (DE # 206). However, the conclusory arguments offered by the New Age Defendants in support of their request failed to persuade the undersigned that the requested motion was with merit. Therefore, on June 2, 2009, the undersigned denied the request without prejudice (DE # 214). In response, the New Age Defendants filed the instant motion renewing their request for leave, which provides a detailed analysis of their proposed arguments under Rule 12(b)(6) (DE # 224).

The undersigned is persuaded that the New Age Defendants' request for leave to file a motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is not without merit.

Therefore, the New Age Defendants' motion for leave to file a motion to dismiss is GRANTED. Moving papers shall be filed on or before August 14, 2009. Opposition papers shall be filed on or before August 24, 2009. Reply papers shall be filed on or before August 31, 2009.

s/ Michael A. Shipp
HONORABLE MICHAEL A. SHIPP
UNITED STATES MAGISTRATE JUDGE